

ARKANSAS SUPREME COURT

No. CR 06-1325

KEVIN SEALS
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered January 11, 2007

PRO SE MOTION FOR BELATED
APPEAL OF ORDER [CIRCUIT
COURT OF MISSISSIPPI COUNTY,
OSCEOLA DISTRICT, CR 2002-262,
HON. VICTOR HILL, JUDGE]

MOTION DENIED.

PER CURIAM

In 2003, petitioner Kevin Seals was found guilty by a jury of murder in the second degree and attempted murder in the second degree. An aggregate sentence of 240 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Seals v. State*, CACR 04-106 (Ark. App. Nov. 3, 2004).

In 2005, petitioner timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. On June 3, 2005, the court entered an order directing the State to conduct an investigation on an issue and submit a report to the court. On December 1, 2005, the court entered its final order on the Rule 37.1 petition, denying relief. On January 31, 2006, petitioner filed with the circuit clerk an untimely notice of appeal from the December 1, 2005, order.

On November 5, 2006, petitioner filed in this court the instant motion seeking leave to proceed with a belated appeal. It is not clear from the motion whether he intended the motion to encompass both the interim order entered June 3, 2005, *and* the final order; but, in any event, only

the final order was an appealable order. Ark. R. App. P.–Civ.2 (a)(1) and (b).

As grounds for the motion, petitioner asserts that on June 14, 2005, he mailed a notice of appeal from the interim order to the circuit clerk, but it was apparently lost in the mail. He further alleges that on December 16, 2005, he mailed a notice of appeal from the final order, but it was not filed by the clerk until January 31, 2006. He contends that inasmuch as he tried to file a timely notice of appeal from each of the orders and the Rule 37.1 petition had merit, he should be permitted to proceed with a belated appeal. Petitioner has appended to the motion the affidavit of an unidentified person who avers that petitioner dispatched “legal mail” from the prison where he is incarcerated on December 16, 2005, but there is no confirmation that the envelop contained a notice of appeal. Moreover, even if the envelop contained a notice of appeal, petitioner offers no proof that a notice of appeal from the December 1, 2005, order was received by the circuit clerk within the thirty-day period allowed by Ark. R. App. P.–Civ. 4(a) to file a timely notice of appeal but not filed.

A petitioner has the right to appeal a ruling on any petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right goes the responsibility to file a timely notice of appeal within thirty days of the date the order was entered.

If the petitioner fails to file a timely notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure, regardless of the merit of the pleading denied by the court. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). The fact that a petitioner is proceeding *pro se* does not in itself constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*).

This court has specifically held that it is not the responsibility of the circuit clerk or anyone

other than the petitioner to perfect an appeal. *See Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*). The litigant who claims to have mailed an item has the burden of proving that it reached the circuit clerk by the date it was due to be filed. *See Leavy v. Norris*, 324 Ark. 346, 920 S.W.2d 842 (1996) (*per curiam*). The bare allegation that a notice of appeal was mailed but not delivered in a timely fashion by the postal service is not in itself good cause to grant a belated appeal. *Skaggs v. State*, 287 Ark. 259, 697 S.W.2d 913 (1985) (*per curiam*). As petitioner has not established that the clerk received a notice of appeal within thirty days of the date the final order was entered but did not file it, and he has stated no good cause for his failure to timely file a notice of appeal, the motion to proceed with a belated appeal is denied.

Motion denied.